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OPEN MEETING ITEM



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

MARK SENDROW  
DIRECTOR

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MARC L. SPITZER  
COMMISSIONER

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007-2998  
TELEPHONE: (602) 542-4242  
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MEMORANDUM

Arizona Corporation Commission

DOCKETED

TO: Commissioner Jim Irvin  
Commissioner William A. Mundell  
Commissioner Marc L. Spitzer

DEC 22 2000

FROM: Mark Sendrow *MS*  
Director of Securities

DOCKETED BY *MS*

DATE: December 21, 2000

RE: Proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same for Global Harvest Corp., David Patten and Albert Tabah, S-03424A-00-0000

CC: Brian C. McNeil, Executive Secretary

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SECURITIES DIVISION  
DOCUMENT CONTROL

Attached is a Proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same for Global Harvest Corp., David Patten and Albert Tabah (collectively "Respondents"). The Order requires Respondents to cease and desist their activity and to pay a penalty of \$20,000.

Global Harvest Corp. ("GHC"), a Scottsdale based company, offered investments in foreign currency trading accounts. Patten is the president of GHC. In April 2000, representatives of GHC contacted the Division regarding their desire to become registered with the Commission in order to offer foreign exchange currency trading accounts to the public. At the meeting, GHC acknowledged that it had reviewed the decision of the Commission in *In re Forex Investment Services Corp.*, Docket No. S-03177A-98-0000, Decision No. 62403, in which a foreign currency trading firm was sanctioned by the Commission for, among other things, selling unregistered securities. GHC expressed to the Division its desire to properly register its foreign currency investments. Despite that representation, in June 2000, GHC ran an advertisement in the Arizona Business Gazette soliciting investors. In response to that ad, a Securities Division investigator contacted GHC, held three meetings with Tabah and one with Patten. In those meetings, she was offered an unregistered foreign currency investment with GHC.

A temporary cease and desist order was entered against Respondents on September 12, 2000. GHC then filed an action against the Commission in United States District Court arguing that Arizona law was preempted by the federal Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*,

and seeking an injunction prohibiting the Commission from proceeding against GHC. No substantive rulings have yet been made by that Court.

The proposed Consent Order finds that the foreign currency trading accounts offered by Respondents were securities which were not registered in Arizona, nor exempt from registration, in violation of A.R.S. § 44-1841. It finds that Respondents were not registered as securities salesmen or dealers in Arizona, in violation of A.R.S. § 44-1842. It imposes a permanent cease and desist order against Respondents and orders them to pay an administrative penalty of \$20,000. No amount of restitution was ordered at this time due to the fact that the temporary cease and desist order was imposed prior to any investor providing GHC with funds. If any investors subsequently become known, the Order does cover that contingency by requiring payment of restitution.

Under the Order, the federal lawsuit against the Commission will be dismissed with prejudice, with each side to pay their own attorney's fees and costs. In addition, Respondents agree that they will never offer or sell foreign currency contracts in Arizona. Patten and Tabah also agree that they will not exercise any control over any entity that offers or sells securities in Arizona.

The Division recommends approval of the Order.

Originator: Mark Dinell

AG Assigned: Moira McCarthy

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1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN  
Commissioner  
3 WILLIAM A. MUNDELL  
Commissioner  
4 MARC L. SPITZER  
Commissioner  
5

6 In the matter of:  
7 GLOBAL HARVEST CORP.  
An Arizona corporation  
8 4800 N. Scottsdale Rd., Suite 2600  
Scottsdale, AZ 85251  
9

10 DAVID PATTEN  
An individual  
7333 E. Chaparral Rd.  
11 Scottsdale, AZ 85250  
12

13 ALBERT TABAH  
An individual  
6915 E. Orange Blossom Lane  
14 Scottsdale, AZ 85253,  
15

Respondents.

) DOCKET NO. S-03424A-00-0000

) DECISION NO. \_\_\_\_\_

) **ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AND CONSENT TO SAME**

16  
17           RESPONDENTS GLOBAL HARVEST CORP. ("GHC"), DAVID PATTEN ("PATTEN")  
18 and ALBERT TABAH ("TABAH") (collectively "RESPONDENTS"), elect to permanently waive  
19 their right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S.  
20 § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist ("Order").  
21 RESPONDENTS admit the jurisdiction of the Arizona Corporation Commission ("Commission");  
22 neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and  
23 consent to the entry of this Order by the Commission.  
24 ..  
25 ..  
26 ..

## I.

## FINDINGS OF FACT

1  
2  
3 1. Global Harvest Corp. ("GHC"), is an Arizona corporation, located at 4800 N.  
4 Scottsdale, Rd., Suite 2600, Scottsdale, Arizona 85251.

5 2. David Patten ("PATTEN") is president of GHC and resides at 7333 E. Chaparral Rd.,  
6 Scottsdale, Arizona 85250.

7 3. Albert Tabah ("TABAHA") is employed by GHC and resides at 6915 E. Orange  
8 Blossom Lane, Scottsdale, Arizona 85253.

9  
10 4. RESPONDENTS have engaged in the offer or sale within or from Arizona of  
11 securities in the form of commodity investment contracts to the general public.

12 5. In April 2000, representatives of GHC contacted the Division regarding their  
13 alleged desire to become licensed with the Commission in order to offer foreign exchange currency  
14 trading accounts to the public. On April 26, 2000, GHC and its legal counsel met with the Division  
15 at the Division's offices. Among the representatives of GHC at the meeting was PATTEN. At the  
16 meeting, GHC acknowledged that it had reviewed the decision of the Commission in *In re Forex*  
17 *Investment Services Corp.*, Docket No. S-03177A-98-0000, Decision No. 62403, in which a  
18 foreign currency trading firm was sanctioned for, among other things, selling unregistered  
19 securities. GHC expressed to the Division its desire to properly register its forex investments.  
20

21 6. After the meeting, on May 5, 2000, GHC's counsel wrote to the Division stating  
22 that GHC had not offered or sold foreign currency in Arizona and was not pursuing clients. GHC's  
23 counsel also stated that the company was owned entirely by Great Capitol Group, Ltd., a British  
24 Virgin Islands' corporation. GHC's counsel further assured the Division that GHC "will not open  
25 its doors until they are given approval by the Arizona Corporation Commission." Soon thereafter,  
26 GHC ceased providing any further information to the Division.

1           7.       In or about June 2000, GHC ran an advertisement in the Arizona Business Gazette,  
2 a weekly newspaper of general circulation, based in Phoenix, Arizona. The advertisement ran for  
3 several weeks. The advertisement stated:

4           Do you have all your eggs in one basket? Are you tired of your brokerage firm?  
5           Here is your chance to learn technical analysis and use your knowledge to trade  
6           your own FOREX (Foreign Exchange) and short-term stocks investment.  
7           GLOBAL HARVEST Corp. is offering specialized workshops to successfully  
8           self-trade FOREX and Stocks. Hands-on experience. Live market trading. For  
9           further information and registration, please contact Albert Tabah PHONE: 480-  
10           425-2010, GLOBAL HARVEST CORP., Finova Corporate Center, 4800 N.  
11           Scottsdale Road, Suite 2600, Scottsdale, AZ 85251.

12           8.       In July 2000, an Arizona investor called the number that was advertised and talked  
13 with TABAH. The investor later met with TABAH in August 2000. At the meeting, TABAH  
14 stated that GHC was a forex company based in Hong Kong. TABAH said that GHC had been in  
15 business for a number of years in Asia and the United States. He said the company did actual forex  
16 trading, rather than just train people to trade forex by themselves.

17           9.       TABAH described the forex investments as being high risk but with a high reward.  
18 He said that Patten, the president and part-owner of GHC, earns 33% per annum on his accounts.  
19 TABAH said that a trader, such as himself, would do the forex trading for the investor. The  
20 trading would be short term, with the trades normally closed out within an hour of being opened.  
21 All the trading would be done through Macau.

22           10.      TABAH said that the minimum investment was \$20,000. He said that he would be  
23 the personal trader for the investor. He said that if the investor brought in other investors, the  
24 investor would earn money off those accounts. TABAH also told the investor that if the investor  
25 kept his or her money offshore in Macau, he could avoid paying income taxes on any profits.

26           11.      TABAH said that GHC did not need a license to trade in forex.



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**III.**  
**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that in the event that the Commission in the future becomes aware of additional investors in GHC, pursuant to A.R.S. § 44-2032, RESPONDENTS shall, jointly and severally, pay restitution to those investors as will be shown on the records of the Commission, plus interest at the rate of 10% per annum from the date of each investment until paid in full. Payment is to be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall pay  
2 an administrative penalty, jointly and severally, in the amount of \$20,000, payable to the State of  
3 Arizona. Payment shall be made in full by cashier's check or money order on the date of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
6  
7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, Brian C. McNeil, Executive  
10 Secretary of the Arizona Corporation Commission, have hereunto  
11 set my hand and caused the official seal of the Commission to be  
12 affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of  
\_\_\_\_\_, 2001.

13 \_\_\_\_\_  
14 BRIAN C. McNEIL  
Executive Secretary

15 \_\_\_\_\_  
16 DISSENT  
(md)

17 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,  
18 voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us)  
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**CONSENT TO ENTRY OF ORDER**

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1. RESPONDENTS GHC, PATTEN and TABAH, admit the jurisdiction of the Commission over the subject matter of this proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to a hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS acknowledge that this Order constitutes a valid final order of the Commission.

2. RESPONDENTS knowingly and voluntarily waive any right they may have under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. RESPONDENTS acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. RESPONDENTS acknowledge that they have been represented by counsel in this matter, they have reviewed this Order with their attorney and understand all terms it contains.

5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order. RESPONDENTS agree that they shall not challenge the Findings of Fact and Conclusions of Law in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the State to engage in the practice of any business or profession.

6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual

1 basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and  
2 employees understand and comply with this agreement.

3 7. While this Order settles this administrative matter between RESPONDENTS and the  
4 Commission, RESPONDENTS understand that this Order does not preclude the Commission from  
5 instituting other administrative proceedings based on violations that are not addressed by this  
6 Order.

7 8. RESPONDENTS understand that this Order does not preclude the Commission from  
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
9 that may be related to the matters addressed by this Order.

10 9. RESPONDENTS understand that this Order does not preclude any other agency or officer  
11 of this state or its subdivisions from instituting administrative, civil or criminal proceedings that  
12 may be related to matters addressed by this Order.

13 10. GHC agrees that within five business days of this Order being docketed by the  
14 Commission, it shall dismiss with prejudice its case currently pending in United States District  
15 Court for the District of Arizona, *Global Harvest Corp. v. Arizona Corporation Commission, et al.*,  
16 No. CIV 001793 PHX SMM, with each party to bear their own attorneys' fees and costs.

17 11. RESPONDENTS agree that they will not offer or sell foreign currency contracts to or  
18 from Arizona at any time in the future.

19 12. RESPONDENTS PATTEN and TABAH agree that they will not exercise any control  
20 over any entity that offers or sells securities within or from Arizona.

21 13. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its  
22 terms and conditions. If RESPONDENTS breach any provision to which they have consented,  
23 the Commission may vacate this Order and restore this case to its active docket.

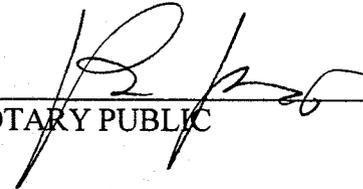
24 14. PATTEN represents that he is authorized to execute this Consent on behalf of GHC.  
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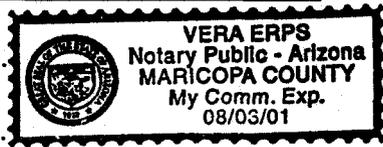
GLOBAL HARVEST CORP.

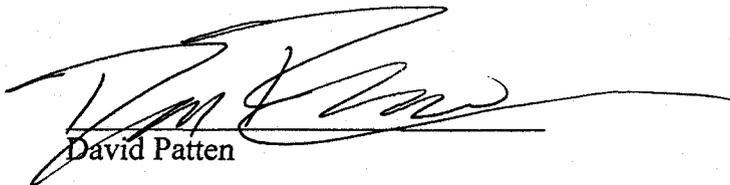
  
\_\_\_\_\_  
Its President

SUBSCRIBED AND SWORN TO BEFORE me this 12<sup>th</sup> day of December,  
2000.

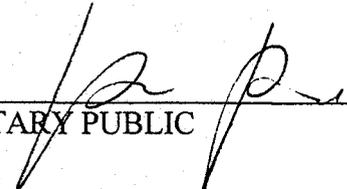
  
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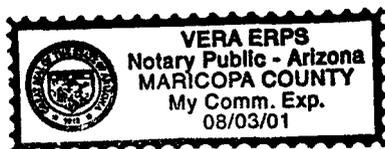


  
David Patten

SUBSCRIBED AND SWORN TO BEFORE me this 12th day of December, 2000.

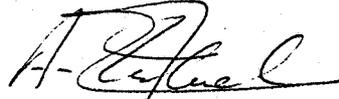
  
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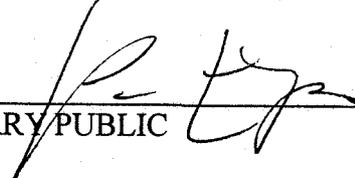
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Albert Tabah

SUBSCRIBED AND SWORN TO BEFORE me this 13 day of December, 2000.



NOTARY PUBLIC

My Commission Expires:

